

REPORT - PLANNING COMMISSION MEETING
June 12, 2003

Project Name & Number: **ACCESSORY STRUCTURES (PLN2000-00143)**

Applicant: City of Fremont

Proposal: To consider a Zoning Text Amendment modifying various sections of the Fremont Municipal Code pertaining to accessory structures and parking in order to remove ambiguities and conflicts with the adopted Building Code.

Staff proposes modifications to the following existing sections of the Zoning Ordinance:

8-2143.2	Definitions: Fence height
8-2176	Definitions: Patio structure
8-21822.1	(H-I): Development standards: Decks and balconies
8-22009	Parking area details
8-22009.5	Parking accessible to the disabled
8-22161	Swimming pools
8-22203	Accessory structures
8-22204	Accessory structures—Side and rear yard exceptions and modifications
8-22206	Accessory structures—Rear yard exceptions and modifications
8-22207	Projections into required yards

In addition, the proposal would add a definition of “wet band” and relocate the regulations in existing Sections 3-81000 and 3-81001 relating to protection of zero lot line residences to new sections of the Zoning Ordinance.

Recommended Action: Recommend to City Council

Location: Citywide

Agent of Applicant: City Planner

Consultant(s): None

Environmental Review: Exempt under the general rule in Section 15061(b)(3) of the *CEQA Guidelines*. CEQA applies only to projects that have the potential for causing a significant effect on the environment.

Public Hearing Notice: Public hearing notification is applicable. A Public Hearing Notice, including a one-eighth (1/8)-page display advertisement, was delivered to *The Argus* on May 28, 2003, to be published by June 2, 2003.

In addition, three public hearing notices were mailed as a courtesy to interested parties.

Executive Summary: Planning staff proposes a series of small changes in the regulations governing accessory structures, structures which occur most often on single-family residential lots. Most of these changes remove ambiguities and conflicts between laws. The actual policy changes involved are the following:

- (a) Single garage doors could be a minimum width of 8' instead of 9'.
- (b) Structures up to 6' 6" high could abut property lines when they are up to 120 square feet in floor area instead of 100 square feet.
- (c) Detached structures, such as sheds, up to 120 square feet in floor area could abut the house or other structures when they do not encroach on the required side yard or block any required doors or windows.

- (d) The specific zoning requirement that fences around swimming pools be 5' high would be removed in favor of the 4' barrier requirement mandated by the California Building Code. General language requiring screening of pools would remain, however, except in the Hill Area, where solid fencing is mostly prohibited.

Background: In the course of administering the Zoning Ordinance, Planning staff regularly identifies provisions that could be improved. This report identifies a series of such provisions. Staff believes it is important for the City to modify the items discussed in this report because, while none of the issues involved is major, they affect a broad range of Fremont residents every day.

This set of proposals addresses areas of overlap between requirements of the Zoning Ordinance pertaining to accessory structures and uses and architectural projections, on the one hand, and requirements of the Building Code or other laws on the other. The requirements addressed here relate specifically to bay windows, chimneys, decks, detached accessory structures (such as cabanas, gazebos, guest houses and sheds), eaves, fences, parking (garage doors, carport openings and parking accessible to the disabled), patio covers, porches, exterior stairs and swimming pools. Many of the relevant zoning regulations appear to have been adopted originally to reflect Building Code requirements, which in some cases have changed while the corresponding zoning regulations have not. The present proposal consists primarily of straightforward modifications to improve correspondence with the Building Code and other laws. All the changes are motivated by one or more of the following considerations: (1) updating regulations to reflect changed State laws and City policies, (2) removing ambiguities by codifying existing Zoning Administrator interpretations and (3) bringing the Zoning Ordinance into closer alignment with construction codes.

Project Description and Analysis: The project consists of adding the following new sections and modifying the following existing sections in the Fremont Municipal Code. The table below lists the sections generally in the order in which they appear in the Municipal Code, except that sections addressing the same topic are grouped together. After the list follows a description and then an analysis of each proposed modification, in the same order:

Section No. in Report	Section Number in Fremont Municipal Code	New or Existing?	Description	Section No. in Exhibit
I	1-3104(b)(1), (2)	Existing	Zero and Quasi-Zero Lot Line Residences	1
I	3-81000, 3-81001	Existing	Zero and Quasi-Zero Lot Line Residences	2
I	8-2162.6.2.5	New	Zero and Quasi-Zero Lot Line Residences	4
I	8-2162.6.6	New	Zero and Quasi-Zero Lot Line Residences	5
I	8-22166	New	Zero and Quasi-Zero Lot Line Residences	13
II	8-2143.2	Existing	Fence Height	3
III	8-2176	Existing	Patio Structures (Patio Covers)	6
IV	8-2199.23.7	New	Wet Bands	7
V	8-21822.1(o)	Existing	Balconies: (H-I) Hillside Combining District	9
VI	8-22009(g)(3)	Existing	Garage Doors	10
VII	8-22009.5	Existing	Parking Accessible to the Disabled	11
VIII	8-22161	Existing	Swimming Pools	12
IX	8-22203	Existing	Attached Structures	14
X	8-22203(b)	New	Separation between Detached Structures	14
XI	8-22204	Existing	Detached Structure Setback from Property Line	15
XII	8-22204(a), (b)	Existing	Deck Height	15
XII	8-21822.1(g)	Existing	Deck Height: (H-I) Hillside Combining District	8
XIII	8-22206	Existing	30% Encroachment on Required Rear Yard	16
XIV	8-22207(a)(3), (b)	Existing	Projections Into Required Yards	17
XV	After 8-22213	New	Endnote	18

I. Zero and Quasi-Zero Lot Line Residences

Staff proposes to relocate provisions regulating use of areas adjacent to zero lot line and quasi-zero lot line walls (current Section 3-81001) from Title III (Public Safety, Welfare and Morals) to a more logical, easy-to-find location in Title VIII, Chapter 2 (Zoning Ordinance). This new location will be in the Zoning Ordinance's Article 21.3 (Special Provisions Applying to Miscellaneous Uses).

"Zero lot line" refers to structures built with a setback of zero (no setback) from one interior (non-street) property line. "Quasi-zero lot line" refers to a pattern of development that appears on plans as conventional detached construction but which operates and appears in the field like zero lot line (because structures are built adjacent to easements for the exclusive use of the next-door neighbor). The provisions in question prohibit most storage and the construction of accessory structures within three feet of a zero lot line wall. In addition, existing Section 3-81001 provides definitions for zero lot line and quasi-zero lot line, which will be moved to new sections in Article 1 (Definitions).

Note that private easements dedicated as part of zero lot line project developments typically establish further restrictions on the use of land adjacent to zero lot line walls – often land within five feet of such walls. Parties seeking to enforce such easement restrictions generally need to file private civil suits by themselves or with a homeowners association. Because these parties seek to enforce private property rights, the City does not become involved in any enforcement capacity.

Section 3-81000 includes a reference to Section 1-3104 of the Municipal Code, in which it is provided that the Building and Safety Manager enforces restrictions on property adjacent to zero lot line walls. In practice, the Community Preservation Manager, who reports to the Building and Safety Manager, usually enforces the restrictions. When the restrictions move into the Zoning Ordinance, the Building and Safety and Community Preservation Managers will automatically continue to be the enforcing officers. The language in Section 1-3104 providing for enforcement of this section, and all of Section 3-81000, would be deleted. See Exhibit A, Sections 1, 2 and 13.

Analysis: The recommended change does not change policy and would improve administration and enforcement of the ordinance.

II. Fence Height

Staff proposes two changes to the definition of fence height. One would clarify that the (vertical) grade difference between the bottom of a fence and the top of a retaining wall that are within ten (horizontal) feet of one another is excluded from the combined overall height that the Zoning Ordinance limits. The other would clarify where fence height is measured generally.

(a) Grade Between Fence and Retaining Wall: In the Zoning Ordinance, fence height is measured on the side of the fence on which the ground is lower; that is, the side that yields a greater fence height above ground. When a fence is on top of a retaining wall or within ten feet of it, fence height includes the total height of the fence-plus-wall. This definition is used in the various sections of the Zoning Ordinance that apply height limits to fences.

For instance, the maximum height of a fence on an interior property line is eight feet in an R-1 Single-Family Residence District. If a fence is on top of a retaining wall that is on a property line, and the retaining wall is three feet high from the grade on the lower side (the maximum height for retaining walls in most of the hill areas of Fremont), the maximum height of the fence would be five feet.

The Zoning Ordinance does not address what fence height means when there is a fence within ten feet of a retaining wall and there is a difference in grade between the top of the retaining wall and the bottom of the fence. In 1998, the Zoning Administrator made a finding that the grade difference or slope should be disregarded. Staff proposes to codify this finding. (See also under *Analysis* below.)

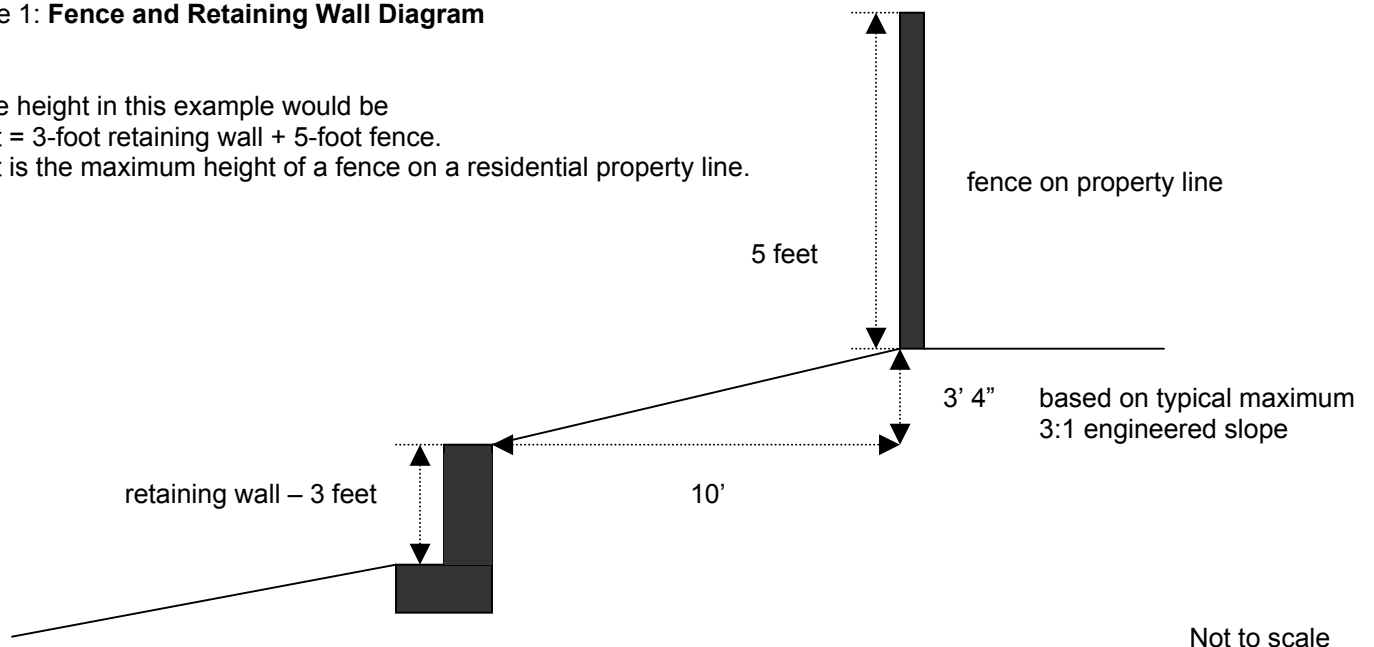
Analysis: Fence height is regulated partly for reasons of safety and partly because of the visual impacts of fences. The height is measured on the side on which the ground is lower because that is the side from which the fence appears higher and therefore has potentially greater visual impact.

Retaining walls represent a grade change, and a fence on top of, or near, a retaining wall may therefore have a visual impact greater than it would have otherwise. The height of a retaining wall within a certain distance of a fence is added to the height of the fence for regulatory purposes, the same as if the fence were on top of the wall, because otherwise there would be an incentive for homeowners to separate their fences from their retaining walls by a few inches or feet in order to evade the restrictions of the ordinance. On the other hand, no purpose would be served by restricting the combined height of fences and retaining walls that are nowhere near each other.

Adding the grade difference into the overall height that the Zoning Ordinance regulates might be logical from the standpoint of controlling the total visual impact of a fence on a rising slope. However, since fence height only includes the height of retaining walls within ten feet, and the maximum slope typically allowed for an engineered grade is 3:1, the maximum difference in grade between a fence and a retaining wall limited to a combined height of eight feet will normally be 3' 4", yielding a maximum combined height of 11' 4". If, on the other hand, such a grade difference were included in the maximum overall height, a fence near a retaining wall could be limited to a height of 1' 8". See Figure 1.

Figure 1: Fence and Retaining Wall Diagram

Fence height in this example would be
 8 feet = 3-foot retaining wall + 5-foot fence.
 8 feet is the maximum height of a fence on a residential property line.



(b) Where Fence Height is Measured: The wording of the existing definition of fence height is confusing where it says the height is measured "at the lowest point of the fence or hedge". The intent of this definition is to determine on which *side* of the fence to measure the height when the ground is higher on one side than it is on the other. It is possible to misinterpret the definition as restricting the rise in elevation of a fence from one *end* to the other, which would restrict fences from following a natural slope.

Staff recommends replacing the last portion in the definition of fence height as the "elevation between the top of a fence or hedge, and the ground surface *at the lowest point of the fence or hedge*", with the phrase "*on that side of the fence or hedge on which the ground is lower*" (emphasis added). See Exhibit A, Section 3.

Analysis: Staff already interprets the Zoning Ordinance definition of fence height in the manner that the recommended modifications would codify. Therefore the modification would not change policy but should improve clarity and consistency.

III. Patio Structures (Patio Covers)

A “patio structure” or “patio cover” is a type of non-habitable residential structure, which may be semi-enclosed. The Zoning Ordinance includes a definition for these structures, which was originally modeled after the definition in the Building Code. The Building Code definition and requirements for these structures have changed since the Zoning Ordinance definition was adopted. It is proposed to incorporate the Building Code definition into the Zoning Ordinance by reference and to remove discrepancies between the definitions.

The current definition of patio structure in the Zoning Ordinance is:

“Patio structure” shall mean an attached or detached roofed accessory structure open in one or more sides, whose principal use shall be for outdoor living and recreation. For the purposes of this section, the open sides may be closed with insect screening or readily removable flexible plastic screening not more than twenty mills in thickness.

The corresponding current definition of “patio cover” in the Building Code is the following:

Patio covers are one-story structures not exceeding 12 feet (3657 mm) in height. Enclosure walls may have any configuration, provided the open area of the longer wall and one additional wall is equal to at least 65 percent of the area below a minimum of 6 feet 8 inches (2032 mm) of each wall, measured from the floor. Openings may be enclosed with insect screening or plastic that is readily removable translucent or transparent plastic not more than 0.125 inch (3.2 mm) in thickness.

Patio covers may be detached or attached to other buildings as accessories to Group U; Group R, Division 3; or single dwelling units in Group R, Division 1 Occupancies. Patio covers shall be used only for recreational, outdoor living purposes and not as carports, garages, storage rooms or habitable rooms (Section 3116, *2001 California Building Code*).

In addition, the International Conference on Building Officials, which promulgates and interprets the Uniform Building Code, considers and approves alternative materials and standards for patio structures (patio covers), including certain types of removable glass windows. By deferring to the Building Code’s regulations for patio covers, the use of such alternative materials and standards will also be recognized. See Exhibit A, Section 6.

Analysis: The construction industry generally designs patio structures to meet the Building Code standards, which may or may not meet the standards in the Zoning Ordinance. This causes hardships for patio structure contractors and homeowners who propose the structures. The City has distinct regulations for patio structures since patio structures are not designed to be habitable and do not increase the habitable floor area of a dwelling. The Building Code definition satisfies the Zoning Ordinance’s interests.

The Zoning Ordinance definition is already generally interpreted as referring to the Building Code definition. Therefore this modification will not change policy but should improve clarity and consistency.

IV. Wet Bands

For many years the City has required “wet bands” along the edge of properties developed adjacent to grasslands in Hazardous Fire Areas. A wet band is a strip of land from which combustible vegetation must be cleared, in which combustible structures are prohibited and which requires the installation of irrigated landscaping or pavement in order to reduce the built-up portion of the property’s exposure to fire from adjacent unimproved lands. Wet bands are a type of firebreak, which are required by the adopted Fire Code (Section 8601) and discussed further in the International Fire

Code Institute's Urban-Wildland Interface Code. The City typically requires developing lots in Hazardous Fire Areas to establish 30-foot-wide wet bands along any property line adjoining unimproved lands.

There has never been a definition of wet band in the Zoning Ordinance. Staff proposes no changes to the way that wet band requirements are imposed or administered, merely to provide a succinct definition of the term for the benefit of homeowners, homebuyers, the development community and staff. See Exhibit A, Section 7.

Analysis: The City already uses the term wet band in the sense that the Zoning Ordinance definition would codify. Therefore this modification will not change policy but should improve clarity and consistency.

V. (H-I) Hillside Combining District: Balconies

Staff proposes two minor clarifications of the development standards applicable to the (H-I) Hillside Combining District. One would clarify how deck height is regulated, and is described at greater length under XII. Deck Height below.

The other modification would correct a typographical error in the section regulating balconies, where "of" was rendered "or". See Exhibit A, Section 9.

VI. Garage Doors

The Zoning Ordinance establishes a minimum width for residential single-car garage door openings of 9 feet. Most proposed single-car garage door openings are 8 or 9 feet wide. It is proposed to reduce the required width of a single-car opening to 8 feet to make it easier for homeowners and developers to construct single-car doors. Single-car doors are often more attractive than double-car doors; the Small-Lot Design Guidelines, adopted by the City Council in 1999, recommends them. See Exhibit A, Section 10.

Analysis: Each parking space in a garage is required to be 9 feet wide, and a doorway of either 8 or 9 feet is adequate for accessing the parking space. The proposed modification will make it easier for homeowners and builders to comply with the Small-Lot Design Guidelines.

VII. Parking Accessible to the Disabled

The parking regulations in the Zoning Ordinance include regulations setting forth the number of parking spaces required to be accessible to disabled people. The standards for accessible parking that the City enforces have been different, however, since the adoption of revisions to the California Building Code that implemented the Americans with Disabilities Act of 1990. Staff proposes to replace the current language in the Zoning Ordinance with a reference to the standards in the Building Code, which are the standards currently enforced.

The current Zoning Ordinance requirement applying to smaller parking facilities is that one out of every forty parking spaces must be accessible to disabled people. The Building Code now requires that one out of every twenty-five parking spaces be accessible in parking facilities for up to 100 vehicles. (The proportion of accessible spaces is smaller for parking lots with more than 100 vehicles.) The Building Code also sets forth detailed standards on location, dimensions and other characteristics of such parking spaces, which conflict in part with the corresponding standards in the Zoning Ordinance. See Exhibit A, Section 11.

Analysis: The City already enforces the accessible parking standards set forth in the Building Code in lieu of the less stringent requirements in the Zoning Ordinance and the proposed modification will consolidate these standards in one place. Therefore the modification will not change policy but should improve clarity and consistency.

VIII. Swimming Pools

Fencing around swimming pools (including spas) serves two purposes. It provides a barrier to small children or others who need to be supervised around pools to reduce their risk of falling in and drowning. It also provides screening and privacy. The current requirements of the Zoning Ordinance for fencing around swimming pools are problematic, first,

because they are different than the corresponding Building Code requirements, and second, because they conflict with requirements applicable to the Hill Area.

(a) *Safety Barrier*: The Zoning Ordinance currently requires a minimum five-foot fence around yards containing pools. The Building Code, however, in order to ensure that a young child cannot reach the pool unsupervised, requires only a four-foot fence or other barrier. The Building Code supplements this standard with design standards intended to make it impossible for a young child to scale a barrier fence. For instance, the Building Code requires that any gates in the barrier fence be self-latching and self-locking, and that any doors that open onto an open pool area be equipped with an alarm to alert adults when a child goes from the house to the pool area. It is proposed to delete the Zoning Ordinance's requirement for a five-foot fence and add a statement referring to the barrier requirements of the Building Code.

(b) *Screening (Outside the Hill Area)*: The Zoning Ordinance also currently requires that pools within fifty feet of a property line be screened. Staff proposes to keep a basic screening requirement for pools without specifying five feet or another uniform minimum height. Such a requirement could then be invoked in circumstances where screening is an issue. See Exhibit A, Section 12.

Analysis: The Building Code addresses safety concerns such as those relative to swimming pools in a comprehensive, scientific way and is continually updated based on ongoing studies performed by the International Conference of Building Officials. The fact that the four-foot barrier required by the Building Code is supplemented by a five-foot requirement in the Zoning Ordinance requires frequent explanations and regularly confuses the public and sometimes staff. In practice, rear yard fences less than five feet high are rare in Fremont.

(c) *Screening in the Hill Area*: In the Hill Area, the requirement for screening of pools generally contradicts the requirement that fencing more than twenty feet behind the rear building line have an open (see-through) design. The Zoning Ordinance does provide that "the director of planning shall have authority to waive this requirement ... when he determines that because of the topography of the lands involved, or because of other physical characteristics of the pool site, such screening would be impossible or impracticable". Staff proposes to add language automatically waiving the requirement for screening in (H-I) districts and other locations where solid fencing is prohibited. See Exhibit A, Section 12.

Analysis: Although staff can and does waive the requirement for screening of pools in the Hill Area, the ordinance only provides a waiver for locations where "because of ... physical characteristics of the pool site, such screening would be impossible or impracticable". If documentation of site-specific topographic conditions were required whenever someone applies to construct a pool in the Hill Area, the process of getting a permit would be much more difficult, both for the applicant and for staff, than it currently is for most pools.

Waiving the *screening* requirement as described in the last paragraph would not affect the requirement for a *barrier* previously described. In cases where the same fence is proposed to provide both the barrier required by the Building Code and the screening required by the Zoning Ordinance, a waiver with regards to screening would allow the fence to be open (see-through) provided it still prevented access to children as required by the Building Code.

(d) *Proximity to Artificial Slopes*: Finally, the Development Policy for the Hill Area and the provisions of the (H-I) Hillside Combining District prohibit pools from being located within four feet of "any toe or slope of a compacted fill pad" since areas of compacted fill are not stable enough for excavated swimming pools. It is proposed to add the same language to the provisions applying to swimming pools generally since the stability of fill can be an issue regardless of a property's zoning designation. See Exhibit A, Section 12.

IX. Attached Structures

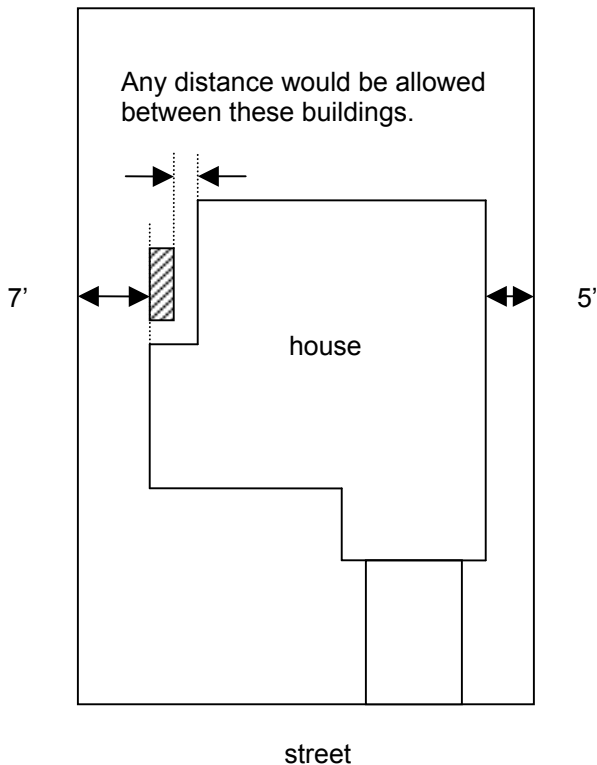
Staff proposes to correct a typographical error in the definition of an attached structure or addition. The current language states that such a structure shall be "structurally *apart* and have a common wall with the main building", while it should say "structurally *a part of* the main building" (emphasis added). It is proposed to make this correction as well as improvements in sentence structure to clarify the meaning of the sentence, that is, that attached structures must comply with the setbacks established for the main building. See Exhibit A, Section 14, subsection (b).

X. Separation between Detached Structures

The Zoning Ordinance currently requires a minimum six-foot separation between accessory buildings of any size, except “lath-covered” structures, and between accessory buildings and a main building. This requirement appears to have been based on the separation required by the Building Code for certain non-habitable buildings over 120 square feet in area that lack fire-rated walls.

(a) *Proposed Exception:* Staff proposes to make a new exception to the minimum separation for structures up to 120 square feet in area except when they are located in a required side yard.

Figure 2: **Separation between Structures**



The six-foot separation has mostly been a problem for residents who want to build a small shed in the side yard next to their house. Staff does not see a problem with allowing such structures in cases where there is sufficient room for them. Since, however, accessory structures over a certain size¹ can be within three feet of a property line and smaller structures may have a zero setback, while side yards are normally at least five feet wide, there could be a possibility of structures blocking or occupying an entire side yard, effectively eliminating the side yard. Hence staff recommends that any structures less than six feet from the house be required to comply with the side setbacks established for the main building. There is an existing provision that structures may occupy no more than 30% of the required rear yard, so no similar restriction is proposed for the rear yard. (See Figure 2.) See Exhibit A, Section 14, subsection (c).

Analysis: The proposed modification does represent a policy change. It will allow homeowners to put small sheds next to their house in cases where the required side yard would not be obstructed. Since the ordinance would still require a six-foot separation for larger structures (over 120 square feet) and for structures encroaching in a required side yard, much of the open space that is protected by the current six-foot separation requirement would continue to be protected.

(b) *Clarifying Changes:* Staff also proposes to add language clarifying that the required separation between buildings is measured from the walls (or other support members), not from roof overhangs or similar projections. Finally, staff proposes to move the

(changed) requirement from Section 8-22204, “Accessory Structures—Side and Rear Yard Exceptions and Modifications” to Section 8-22203, “Accessory Structures—Generally”, as a more logical place to look for such a requirement. See Exhibit A, Section 14, subsection (c).

XI. Detached Structure Setback from Property Line

The Zoning Ordinance currently allows detached accessory structures to occupy required side and rear yards to within three feet of an interior property line, while allowing certain small structures that meet applicable Building Code requirements to abut the property line (zero setback). The provision for structures to abut the property line applies to structures with a maximum overall height of 6' 6" and a maximum gross floor area of 100 square feet.

¹ See under XI. Detached Structure Setback from Property Line.

(a) *Size Change for Structures with Zero Setback:* Staff proposes a change to the maximum size of structures that can be less than three feet from the property line, from 100 square feet to 120 square feet in floor area.

Analysis: The proposed modification does represent a minor policy change that would allow homeowners to place structures up to 120 square feet in floor area adjacent to property lines. The change would be consistent with the spirit of the existing exception for small structures, to allow small structures to be next to an interior property line when they would not have visual impacts on neighbors and would not create a fire hazard or violate the Building Code. The Building Code largely deregulates structures that don't exceed 120 square feet in floor area.

(b) *Delete Outdated Building Code References:* The ordinance also requires that "fire-resistant materials ... be installed and necessary permits obtained in accord with the city's adopted Uniform Building Code". Formerly the Building Code required the use of metal or other fire-rated walls on structures of all sizes that are less than three feet from a property line. Pursuant to the 1997 Uniform Building Code, which has been adopted by the State and the City, the requirement for fire-rated walls was dropped for structures under 120 square feet in floor area. (Structures under 120 square feet in size have not required building permits since 1979 *except* when fire-rated walls are needed.) The requirement for fire-rated walls was dropped because there was no known fire loss history for such structures. The Zoning Ordinance's requirement for fire-resistant materials and permits "in accord with the ... Building Code" is now effectively null and void, since the Building Code currently requires neither permits nor fire-resistant materials for the structures in question. Staff proposes to delete the language in the Zoning Ordinance that implies otherwise.

(c) *Runoff Prohibited across Property Line:* Staff proposes to prohibit structures less than three feet from a property line from draining storm runoff onto the adjoining property. State law prohibits property owners from increasing runoff onto neighboring properties, but the City has not previously, except in the case of larger projects subject to site plan and architectural approval or other discretionary review, taken any steps to prevent violations of this law. To avoid draining runoff off-site, an accessory structure on a property line would need either (1) a slight setback, (2) a shed roof that slopes into the owner's property (away from the property line) or (3) a drainage system that carries runoff away from the property line.

Analysis: This drainage requirement would be new. Staff believes that providing for drainage on-site would help discourage conflicts over runoff between homeowners.

Staff believes that this requirement would be easy to administer. In cases where Planning staff is unsure if a project complies, they would ask Engineering staff to review the proposal. The requirement would not normally necessitate more detailed plans than are currently required nor would it significantly complicate the review process.

(d) *Clarification:* Finally, it is proposed to clarify that encroachment by roof overhangs and similar projections into the required three-foot setback (where such a setback is required) is not allowed. See Exhibit A, Section 15, subsection (g).

XII. Deck Height

The regulations for decks are not clearly described in all places in the Zoning Ordinance. The ordinance currently provides that "patios and decks not more than eighteen inches above grade as *measured at the midpoint of the side having the greatest change in elevation* may be located in interior side yards and rear yards" (emphasis added). Staff proposes to retain the foregoing language but in all other instances to regulate deck height from the maximum height of the deck's finished floor.

The (H-I) Hillside Combining District seems to regulate deck height as the maximum height above ground at any point, but it could be clearer. Outside the (H-I) district, the regulations for decks between 18 inches and 10 feet in height do not define height at all. Staff believes that the intent of the ordinance is to regulate such decks at their highest point. It is proposed to clarify these matters in the parts of the Zoning Ordinance dealing with decks 18" to 10' high as well as in the section regulating deck height in the (H-I) Hillside Combining District. See Exhibit A, Section 8, and Section 15, subsections (a) and (b).

Analysis: It would not be logical to regulate a deck up to 10 feet high “as measured at the midpoint of the side having the greatest change in elevation”, since the maximum height at such a deck’s highest point would be unregulated and could be extremely high. The Zoning Ordinance is already generally interpreted as regulating deck height in the manner confirmed by the proposed modification. Therefore this modification will not change policy but should improve clarity and consistency.

XIII. 30% Encroachment on Required Rear Yard

Section 8-22206(b) establishes a frequently invoked rule that is echoed in other sections and subsections of the Zoning Ordinance and which is sometimes referred to as the “30% rule”.² This rule allows one-story additions and patio structures to encroach on up to 30% of the (originally) “required rear yard” provided a 10-foot setback is maintained from the rear property line.³ Staff proposes to clarify that the calculation of the required rear yard in the case of corner lots excludes the area of the required street side yard.

As subsection (b) states, the 30% is applied to the area “obtained by multiplying the otherwise required rear yard depth by the lot width”. From Section 8-2199.25.2, which defines “required rear yard”, it is clear that the area of the required street side yard is excluded from the area of the rear yard.⁴ This is not made clear, however, in Section 8-22206(b). It is proposed to state in Section 8-22206(b) that the 30% is applied to the area obtained by multiplying the otherwise required rear yard depth by the lot width *less any required street side yard*. See Exhibit A, Section 16. (Section 16 also contains a modification addressing “projections” that is discussed in the next section of this report.)

Analysis: Rear yards are mainly required in order to provide a private open space amenity to residents and to establish a minimum level of privacy between neighbors. Since required street side yards cannot be entirely fenced off and screened from the street, they are not part of private open space and there is no reason to include them in the required rear yard.

The Zoning Ordinance already excludes side street yards from rear yards. However, this is not stated explicitly in the “30% rule”. Therefore this modification will not change policy but should improve clarity and consistency.

XIV. Projections into Required Yards

Section 8-22207 provides that certain architectural features (projections) may project or encroach into required yards—that is, into the setback areas required between the property line and the building wall. Staff proposes clarifying language changes.

(a) One-Story Limit: Section 8-22206(d) of the Zoning Ordinance establishes the rule that “No structure or addition projecting into the required rear yard shall exceed one story in height” while Section 8-22207 provides for architectural projections such as eaves, balconies and chimneys to encroach up to three feet into the yard. Staff proposes to add language to Section 8-22206(d) to clarify that an encroachment by such architectural projections is not subject to the prohibition on second stories.

Analysis: If architectural projections were intended to be restricted to one story in height, the language about balconies would have to be intended to address only balconies from the ground floor. Ground floor balconies are unusual enough that this seems unlikely. Also, while the ordinance would allow eaves on single-story structures, it would prohibit them on two-story structures, an undesirable situation. The Zoning Ordinance is also generally interpreted already as regulating architectural projections in the manner confirmed by this proposed modification. Therefore this modification will not change policy but should improve clarity and consistency.

(b) Other Clarifications: Subsection (a) describes projections that are allowed into setbacks *other than interior side yards*, listing cornices, canopies, eaves, porches, stairways, landings, bay windows, balconies and chimneys, giving the number of feet they may project (ranging from 2’ 6” to 6’ 0”, depending on the type of projection). Subsection (b) provides that the

² Subsection (b) actually cites a figure of 70%, representing the remainder of the required yard that must be left as open space, but the 30% encroachment figure is cited in comparable sections and subsections.

³ The 30% limit applies to the combined floor area of additions and accessory structures.

⁴ The required street side yard is the setback required from the side street on a corner lot.

afore-mentioned projections may encroach into interior side yards *as well*, adding two further restrictions, namely that such projections “shall not extend beyond a point one-third the distance to the property line, but in no case shall the projection be located closer than three feet to the property line”. Unfortunately, subsection (b) does not state this clearly. Staff proposes to reword it.

Subsections (a)(2) and (3) both address encroachment by stairways and landings under different circumstances. Subsection (a)(2) allows stairs, landings and porches that “serve as a required means of egress” to encroach up to 4’ 6”. Subsection (a)(3) allows uncovered stairs and “necessary” landings *up to the entrance floor (usually the ground floor) only* to encroach up to 6’ 0”. The language in subsection (a) (3) that specifies stairs *up to the entrance floor only* is located at a point in the sentence where it does not stand out and is sometimes missed in a quick read. Staff proposes to reword subsection (a)(3). See Exhibit A, Section 17.

XV. Endnote

Several articles of the Zoning Ordinance use superscripts citing standard notes provided at the end of the article to clarify various points. Perhaps the most frequently used superscript is “1”, which is used to indicate that the term so designated has a definition in Article 1. Article 22 (Exceptions and Modifications) uses this “1” superscript multiple times, but is missing an endnote that explains its significance. Staff proposes to add the endnote, as well as to add superscripts where they are missing from defined terms in sections that are being modified for other reasons. Because so many terms in these sections are defined in Article 1 and are frequently repeated, the superscripts will only be added the first time the term is used in each section. See Exhibit A, Section 18 for the new endnote. Superscripts are added (and, in some cases, deleted) in various sections of Exhibit A.

General Plan Conformance: The proposed project is consistent with the existing General Plan because it merely makes minor modifications to development standards affecting accessory structures such as swimming pools, decks and tool sheds as well as bringing the Zoning Ordinance into closer conformity with State law and the adopted Building Code. The following General Plan Goal is applicable to the proposed project:

Land Use (LU) Goal 1: New housing development while conserving the character of the city’s existing single-family residential neighborhoods

Zoning Regulations: The proposed project would also help implement the purpose of the R-1 Single-Family Residence District stated in Section 8-2600, as follows:

to stabilize and protect the residential characteristics of the district and to promote and encourage a suitable environment for family life. The R-1 district is intended for the suburban family home and the services appurtenant thereto.

Applicable Fees: The proposed project would not affect fees. It might reduce applications for variances and similar entitlements, reducing costs to residents. Savings in staff time would match any loss of revenues due to such reduced applications. In any case, the proposed changes should reduce un-reimbursed staff time required to explain and interpret inconsistent, unclear and/or unnecessary regulations.

Environmental Analysis: This project is exempt under the general rule in Section 15061(b)(3) of the 2003 CEQA Guidelines. This rule provides that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

Most of this project will merely clarify existing provisions of law. The policy changes that are proposed only affect accessory structures, and projects involving accessory structures are categorically exempt under Sections 15303 (Class 3), pertaining to construction and location of new small structures, including residential structures, and 15311 (Class 11), pertaining to construction of minor structures accessory to existing commercial, industrial or institutional facilities.

Response from Agencies and Organizations: No public or utility agency has expressed any concern with this proposal.

Staff received a letter from a representative of the Cherry Lane Homeowners Association requesting the City to allow unenclosed but fully covered detached structures to have zero separation from the principal structure in some circumstances. The proposed zoning text amendment would grant this request. See Exhibit A, Section 14, subsection (c).

Figures in Report:

1. Fence and Retaining Wall Diagram
2. Separation Between Structures Diagram

Enclosures:

- Exhibit A (Zoning Text Amendment)
- Letter from Ione Kramer of Cherry Lane Association, Inc., dated August 13, 2002

Exhibits: Exhibit A (Zoning Text Amendment)

Recommended Actions:

1. Hold public hearing.
2. Recommend the City Council find PLN2000-00143 is exempt from environmental review.
3. Find PLN2000-00143 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the goals set forth in the General Plan's Land Use Chapter as enumerated in the staff report.
4. Find the public necessity, convenience and general welfare require the adoption of PLN2000-00143 in order to improve clarity and consistency in the interpretation of the affected sections and to remove unnecessary restrictions.
5. Recommend PLN2000-00143, a Zoning Text Amendment, to the City Council in conformance with Exhibit A (Zoning Text Amendment).

EXHIBIT A
ACCESSORY STRUCTURES (PLN2000-00143)
Zoning Text Amendment

Section 1:

Subsections (1) and (2) of subsection (b) of Section 1-3104 (Power of arrest) of Chapter 3 (Penalty Provisions) of Title I (General Provisions) of the Fremont Municipal Code are amended to read as follows. The remaining subsections are not changed:

(1) Title III – Public Safety Welfare and Morals:

	Title of officer	Provision of Code
(A)	Reserved.	
(B)	Chief of police; fire chief	Chapter 2 (traffic regulations), Article 2
(C)	Chief of police	Chapter 4 (bicycles)
(D)	Chief of police, maintenance and recreation services director	Chapter 5 (animals)
(E)	Chief of police; maintenance and recreation services director; fire chief	Chapter 7 (regulation of streets, sidewalks and other public places), Article 1 (special events and parades)
(F)	Chief of police; maintenance and recreation services director; fire chief	Chapter 7 (regulation of streets, sidewalks and other public places), Article 2 (parks and recreation areas)
(G)	Chief of police, building and safety manager, fire chief	Chapter 8 (miscellaneous), Article 4, (nuisance conditions on private or public property)
(H)	Chief of police; finance services manager, building and safety manager	Chapter 8 (miscellaneous), Article 5 (distribution of advertising)
(I)	Building and safety manager	Chapter 8 (miscellaneous), article 10 (protection of zero lot line residences)
(<u>I</u> J)	Building and safety manager, fire chief	Chapter 12 (hazardous materials management)
(<u>J</u> K)	Chief of police; fire chief; building and safety manager, maintenance and recreation services director	Chapter 21 (fireworks)

(2) Title IV – Sanitation and Health:

	Title of officer	Provision of Code
(A)	Fire chief; building and safety manager; chief of police	Chapter 1 (weed and waste abatement)
(B)	Fire chief; building and safety manager; Alameda County health officer.	Chapter 2 (garbage, rubbish, refuse, etc.), and Chapter 3 (regulation putrescible wastes, etc.)
(C)	Alameda County health officer	Chapter 4 (food establishments)
(D)	Landscape architect; building and safety manager	Chapter 5 (preservation of trees)
(E)	Building and safety manager; fire chief; chief of police	Chapter 6 (smoking pollution control)
(F)	Alameda County health officer; finance services manager; chief of police; building and safety manager.	Chapter 7 (massage establishments)
(G)	Assistant city manager; chief of police; building and safety manager	Chapter 8 (entertainment permits)
(H)	Building and safety manager; chief of police; fire chief; maintenance and recreation services director	Chapter 9 (neighborhood preservation)

Section 2:

Article 10 (Protection of Zero Lot Line Residences) of Chapter 8 (Miscellaneous) of Title III (Public Safety, Welfare and Morals) and its constituent Sections, 3-81000 (Enforcement officer) and 3-81001 (Restricted use of property adjacent to neighboring zero lot line residences), are deleted.

Section 3:

Section 8-2143.2 (Fence height) of Article 1 (Definitions) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Section 8-2143.2. Fence height.

"Fence height" shall mean the difference in elevation between the top of a fence or hedge, and the ground surface, ~~at the lowest point on that side of the fence or hedge on which the ground is lower.~~ Where a fence is erected atop or within ten feet (10') of a retaining wall on the property line or on the same lot, the height of the fence shall include the height of the retaining wall, but shall not include the height of the slope between the top of the retaining wall and the bottom of the fence.

Section 4:

Article 1 (Definitions) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended with the addition of a new Section 8-2162.6.2.5 (Lot line, quasi-zero), to read as follows:

Sec. 8-2162.6.2.5. Lot line, quasi-zero.

"Quasi-zero lot line" means constructed on a boundary of an easement conferring on the owner of adjacent property (the dominant tenant) a right of use for recreation and/or landscaping. A quasi-zero lot line wall means a wall constructed on a boundary of such an easement and a quasi-zero lot line residential development means a residential development in which the dwellings have one quasi-zero lot line wall.

Section 5:

Article 1 (Definitions) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended with the addition of a new Section 8-2162.6.6 (Lot line, zero), to read as follows:

Sec. 8-2162.6.6. Lot line, zero.

"Zero lot line" means constructed on a lot line. A zero lot line wall means a wall constructed on a lot line and a zero lot line residential development means a residential development in which the dwellings have one zero lot line wall.

Section 6:

Section 8-2176 (Patio structure) of Article 1 (Definitions) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2176. Patio structure or patio cover.

"Patio structure" or "patio cover" shall mean an attached or detached roofed accessory structure open in one or more sides, whose principal use shall be is for outdoor living and recreation, when the structure is a "patio cover" per the adopted building code. For the purposes of this section, the open sides may be closed with insect screening or readily removable flexible plastic screening not more than twenty mills in thickness.

Section 7:

Article 1 (Definitions) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended with the addition of a new Section 8-2199.23.7 (Wet band), to read as follows:

Sec. 8-2199.23.7. Wet band.

"Wet band" shall mean a portion of a property in a hazardous fire area that the adopted fire code requires to be maintained as an effective firebreak and a defensible space, which the city requires to be irrigated in a manner effective for fire suppression as well as to facilitate the healthy growth of fire-resistive vegetation, and/or to be paved.

- (a) Brush, flammable vegetation and combustible growth shall be cleared from any wet band at the time of site development and continuously thereafter as required by the fire code.
- (b) No structure, except a swimming pool, shall be erected or installed in a wet band and no combustible material shall be placed in a wet band except in cases where the fire marshal determines that alternative measures will provide an equivalent level of fire safety.

Section 8:

Subsection (g) of Section 8-21822.1 (Development standards) of Article 81.2 ([H-I] Hillside Combining District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (g) Decks ~~shall~~ include any structure ~~which~~ that provides exterior usable space, above grade, ~~which that~~ is wholly or partially supported by structure apart from the wall of the house. In no case and at no point shall the finished floor of decks in an (H-I) Hillside Combining District be more than five feet (5') above the grade established by the approved as-built grading plan or the individual lot's approved as-built grading plan, exclusive of railings. Decks with a finished floor more than eighteen inches (18") above the ground shall be provided with a continuous screen wall that will conceal structural support or with equivalent landscaping.

Section 9:

Subsection (o) of Section 8-21822.1 (Development standards) of Article 81.2 ([H-I] Hillside Combining District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (o) Balconies from upper levels of single-family residences shall be cantilevered and shall be limited to one hundred twenty-five square feet (125 sq. ft.) ~~or of area per forty linear feet (40')~~ of house dimension. A balcony as defined herein shall mean any exterior structure made of wood or other materials which provides usable space above the finished grade and which is wholly supported by or cantilevered from the walls of the house. Where balconies are designed to be an architectural extension of the structure, the requirement for cantilevering may be waived, subject to the approval of the granting authority.

Section 10:

Subsection (3) of subsection (g) (Parking area details) of Section 8-22009 (Development and maintenance of parking and loading areas) of Article 20 (Parking, Loading Areas and Regulations Pertaining to Vehicle Storage in Various Zoning Districts) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (3) Enclosed or covered parking space dimensions ~~for single family dwellings (excluding condominiums)~~ shall be not less than nine feet by nineteen feet (9' x 19'); single openings shall be not less than ~~nine~~ eight feet (8') wide; double (unobstructed) openings shall not be less than sixteen feet (16') wide.

Section 11:

Section 8-22009.5 (Physically handicapped parking standards) of Article 20 (Parking, Loading Areas and Regulations Pertaining to Vehicle Storage in Various Zoning Districts) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22009.5. Physically handicapped parking standards. Parking spaces accessible to disabled people.

~~Physically handicapped p~~Parking spaces accessible to disabled people shall be provided for any building, structure, facility, complex or improved area or portion thereof which is used by the general public or publicly funded residential projects included among the parking spaces provided for any use, and shall be designated as such, in the location and manner required by the adopted building code.

- (a) ~~The number of handicapped accessible parking spaces shall be determined by the following table:~~

<i>Total Number of Parking Spaces</i>	<i>Number of Handicapped Parking Spaces Required</i>
1—40	1
41—80	2
81—120	3
121—160	4
161—300	5
301—400	6
401—500	7
Over 500	1 for each 200 additional spaces reserved

- (b) ~~Physically handicapped parking spaces shall be located as near as practical to a primary entrance. If one space is provided, it shall be fourteen feet wide and lined to provide a nine foot parking area and a five foot loading and unloading area. When more than one space is required in lieu of providing a fourteen foot wide space for each handicapped parking space, two spaces may be provided within a twenty-three foot wide area to include a nine-foot parking area on each side and a five foot lined loading and unloading area in the center. The minimum length of each parking walkway shall be required extending from the front of the handicapped parking space to the principal entrance of any facility. Bumpers or curbs shall be provided in parking spaces to prevent encroachment of vehicles over the required four foot walkway.~~

- ~~(c) Surface slopes of parking spaces for the physically handicapped shall be the minimum possible and shall not exceed one fourth inch per foot (2.083 percent gradient) in any direction.~~
- ~~(d) Each parking space reserved for the handicapped shall be signed as provided for in the California Vehicle Code.~~
- ~~(e) Entrances to and vertical clearances within parking structures shall have a minimum vertical clearance of eight feet, two inches, where required for accessibility to handicapped parking spaces.~~

~~Notwithstanding this section, the state statutes, Title 24, as amended, shall prevail.~~

- ~~(f) The following details for handicapped parking are provided as an interpretation of the preceding section:~~

~~[figures]~~

Section 12:

Section 8-22161 (Swimming pools) of Article 21.3 (Special Provisions Applying To Miscellaneous Uses) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22161. Swimming pools.

~~No~~ Swimming pools¹ shall be allowed in an R district unless it is a conditional use, or, if it is an accessory use and complies with on properties developed for residential use subject to the following conditions and requirements:

- (a) *Use Limited.* ~~# The pool shall be an accessory use~~ intended for the sole use of the occupants of the principal use of the property on which it is located and their guests.
- (b) *Location.* ~~# No pool shall not be located in any required front yard, nor within the limits of any public utility easement except as specified in Article 2 of this chapter, nor closer than three feet (3') to any lot line, nor (for pools requiring excavation) closer than four feet (4') to any toe or slope of a compacted fill pad.~~
- (c) *Mechanical Equipment.* No motor, pump, heater, filter or other mechanical equipment for a pool shall be located within three feet (3') of any side or rear lot line.
- (d) *Fencing Pool Site.*

- (1) ~~Private swimming pools: A private swimming pool, or the property on which such pool is located, shall be surrounded by structures, walls or fences at least five feet high and of such nature that a small child may not reach the pool from the street or from adjacent property without opening a door or gate or scaling a wall or fence.~~

Safety fencing: Every swimming pool shall comply with the barrier requirements established in the adopted building code.

- (2) ~~Public or semipublic pools: A public or semipublic swimming pool, or the property on which such pool is located, shall be surrounded by structures, walls or fences at least six feet high and of such nature that a small child may not reach the pool from the street or from an adjacent property without opening a door or gate or scaling a wall or fence.~~
- (3) ~~Two-family and multiple-family developments: Any fence provided for a swimming pool or other body of water having a depth of more than eighteen inches (18"), located on a property upon which two-family or multiple dwellings are located, shall be protected as follows: The area of the pool or body of water shall be completely enclosed by a non-view-obstructing, ornamental fence not less than five feet in height or by such a fence and a nonresident structure, or a resident structure having no door opening to the immediate area containing the pool or body of water, to which such fence is connected. The fence or structure shall be constructed such that a sphere four inches in diameter cannot pass through. All gates or doors providing direct access to this body of water shall be equipped with a self-closing and self-latching device designed to keep, and capable of keeping, such door or gate securely closed at all times when not in actual use. Such latching device shall be placed at least three feet eight inches above ground level or otherwise made inaccessible to small children.~~
- (4) ~~General: In the case of all swimming pools, if the pool is located within fifty feet of any lot line it shall be screened by a structure or fence at least five feet high and so constructed and maintained that it precludes visibility of the pool from any street or adjoining property; provided, however, that the director of planning shall have authority to waive this requirement for screening in whole or in part in any case when he determines that~~

~~because of the topography of the lands involved, or because of other physical characteristics of the pool site, such screening would be impossible or impracticable.~~

Screening: All swimming pools within fifty feet (50') of a lot line shall be screened from streets and adjoining properties, except in (H-I) districts and other locations where solid fencing is prohibited, and except where the city planner determines that the topography of the lands involved or other physical characteristics of the pool site render screening impossible or impractical.

Section 13:

Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended by the addition of a new Section 8-22166 (Zero lot line residences, property adjacent to) to read as follows:

Section 8-22166. Zero and quasi-zero lot line residences, property adjacent to.

No person shall, within three feet (3') of any zero lot line wall¹ or quasi-zero lot line wall¹ of any neighboring single-family detached dwelling,¹ store, maintain or place any materials or construct or maintain any object.

Excepted from the prohibitions imposed by this section are:

(a) The placing or maintaining of living plant material;

(b) The construction or maintaining of any otherwise lawful fence that:

- (1) Intersects a zero lot line wall or quasi-zero lot line wall at a ninety-degree (90°) angle;
- (2) Is parallel to a front or rear property line of the same lot; or
- (3) Is on an extension of the line of a zero lot line wall or quasi-zero lot line wall;

(c) The maintaining of an originally established grade; and

(d) The maintaining and use of structures¹ or fences¹ lawfully existing as of the effective date of these regulations, provided that this subsection shall not be construed to authorize the confinement of dogs where prohibited by section 3-5806 of this code.

Section 14:

Section 8-22203 (Accessory structures—Generally) of Article 22 (Exceptions and Modifications) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended as follows

Section 8-22203. Accessory structures--Generally.

Accessory structures¹ shall meet the following requirements:

- (a) *Attached or detached construction.* An accessory structure may be erected detached from the main building or, except when a stable, may be erected as an integral part of the main building, or it may be connected therewith by a breezeway or similar structure.
- (b) *Attached to main building.* ~~An accessory structure (not including a patio structure)~~ attached to the main building, ~~shall be made structurally a part of and/or haveing a common wall with the main building, and shall comply in all respects with the requirements of this chapter applicable to the main building.~~
- (c) *Separation between structures.* Detached accessory structures shall be located at least six feet (6') from any structure on the same property, as measured from the exterior surfaces of the walls or support members, with the following exceptions:
 - (1) A lath-covered structure¹ may be any distance from any other structure; and
 - (2) A structure not exceeding one hundred twenty square feet (120 sq. ft.) in floor area¹ and that is not located in a required side yard¹ may be any distance from any other structure, provided it does not block any required means of egress, light or ventilation.
- ~~(ed)~~ *Corner lots.* No detached accessory structure within twenty-five feet (25') of the common property line on a reversed corner lot¹ shall be placed any closer to the side street property line¹ than the required front yard of the adjoining lot, and in no case shall any part of such accessory structure be nearer to the side street lot line than the least width of the side yard required for the main building to which it is accessory.
- ~~(de)~~ *Dwelling use restricted.* Except for guesthouses¹ conforming to subsection (f) of this section and secondary dwelling units¹ conforming to Article 21.3, accessory structures shall not be used for dwelling¹ purposes.
- ~~(ef)~~ *Guesthouses.* Guesthouse accessory structures shall be located on the rear half of the building site¹ and on corner lots shall be no closer to the public street than the principal dwelling structures. No kitchen¹ or cooking facilities shall be permitted in any guesthouse.
- ~~(fg)~~ *Lot coverage.* Accessory structures, not including swimming pools, shall not exceed thirty percent (30%) of the area of the minimum required rear yard.

Section 15:

Section 8-22204 (Accessory structures—side and rear yard exceptions and modifications) of Article 22 (Exceptions and Modifications) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22204. Same – Side and rear yard exceptions and modifications.

The following exceptions and modifications shall apply to the side and rear yard requirements provided herein:

Patios and decks:

- (a) Patios and decks with finished floors not more than eighteen inches (18") above grade as measured at the midpoint of the side having the greatest change in elevation may be located in interior side yards and rear yards.¹
- (b) Decks with finished floors over eighteen inches (18") above grade but ~~less~~ not more than ten feet (10') above grade at any point may encroach into the rear yard to within ten feet (10') of the rear lot line,¹ except that no deck finished floor shall exceed a height of five feet (5') in an (H-I) Hillside Overlay District.

Patio structures and lath-covered structures:

- (c) Patio structures¹ may encroach into required rear yards to within ten feet (10') of the rear lot line, provided that there remains an open space¹ equal to seventy percent (70%) of the otherwise required yard area.
- (d) Patio structures¹ for non-conventional principal residential structures¹ may encroach to within three feet (3') ~~from~~ of any lot line,¹ provided that there remains an open space equal to seventy percent (70%) of the otherwise required yard area into which such encroachment is made.
- (e) Lath-covered structures¹ for non-conventional principal residential structures¹ may encroach to within three feet (3') from the property line, provided that the lath cover is uniformly open.
- ~~(f) Detached accessory structures, with the exception of lath-covered structures¹, shall be located at least six feet from any structure on the same property.~~

Detached accessory structures:

- ~~(g f)~~ Accessory structures,¹ other than dwelling units,¹ detached from the principal structure may be located as close as three feet (3') from any interior lot line. No portion of any such structure shall encroach to within less than three feet (3'), except as provided in subsection (g) below.
- (g) A detached accessory structure may be located within any distance of an interior side or rear property line in a residential district provided:
 - (1) It does not exceed a maximum gross floor area¹ of one hundred twenty square feet (120 sq. ft.); and
 - (2) It does not exceed a maximum overall height of six feet six inches (6' 6"); and
 - (3) It is located at least six feet (6') from any structure on the same lot.
 - (4) Any structure with a roof less than one foot (1') from a property line shall be provided with a gutter or with a sloping roof designed to shed water onto the earth at least one foot (1') from the property line or into an approved drainage system.

- (h) Accessory structures located between the front yard setback and the principal structure shall conform to the minimum side yard setback requirements for the principal structure.
- (i) ~~A detached accessory structure located closer than three feet to any interior side or rear property line in a residential district shall be subject to the following conditions:~~
- ~~(1) It shall be located at least six feet from any structure on the same lot.~~
 - ~~(2) It shall not exceed a maximum overall height of six feet six inches.~~
 - ~~(3) It shall be limited to a maximum gross floor area of one hundred square feet.~~
 - ~~(4) Fire resistant materials shall be installed and necessary permits obtained in accord with the city's adopted Uniform Building Code.~~

Section 16:

Section 8-22206 (Rear yard exceptions and modifications) of Article 22 (Exceptions and Modifications) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22206. Rear yard exceptions and modifications.

The following exceptions and modifications shall apply to the rear yard requirements provided herein:

- (a) At the time of initial construction, single-family and two-family principal structures in residential districts may encroach into otherwise required rear yards to within ten feet (10') of the rear lot line, provided that there remains an open space area equal to one hundred twenty percent (120%) of the area obtained by multiplying the otherwise required rear yard dimension by the lot width.
- (b) Additions to single-family and two-family principal structures in residential districts may encroach into otherwise required rear yards to within ten feet (10') of the rear lot line, provided that there remains an open space area in the required rear yard equal to seventy percent (70%) of the required rear yard area obtained by multiplying the otherwise required rear yard depth by the lot width (less any required street side yard).
- (c) In no instance shall the combined square footage of both accessory structures (except swimming pools) and building additions exceed thirty percent (30%) of the area of the required rear yard.
- (d) Except as provided for architectural projections in Section 8-22207, nNo structure or addition projecting into the required rear yard shall exceed one story in height.
- (e) Additions to nonconventional principal residential structures¹ may not encroach into required rear yard or patio areas.

Section 17:

Section 8-22207 (Projections into required yards) of Article 22 (Exceptions and Modifications) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22207. Projections into required yards.

Certain architectural features may project into required yards or courts¹ as follows:

(a) Into any required front yard, rear yard, court or required side street side yard:

- (1) Cornices, canopies, eaves, or other similar architectural features, may project a distance not exceeding two feet, six inches.
- (2) Porches, stairways and landings, when they serve as a required means of egress from any structure, may project a distance not to exceed four feet, six inches (4' 6").
- (3) An uncovered stair and necessary landings, when neither extends above the entrance floor of the building, except for a railing not exceeding three feet six inches (3' 6") in height, may project a distance not to exceed six feet (6'), provided such stair and landing shall not extend above the entrance floor of the building except for a railing not exceeding three feet, six inches in height.
- (4) Bay windows,¹ balconies and chimneys may project a distance not exceeding three feet (3'), provided that such features do not occupy in the aggregate, more than one-third (1/3) of the length of the building wall on which they are located.

(b) ~~Subject to the limitations in the preceding subsection, projections into any required interior side yard, beyond the exterior wall shall~~ the architectural features described above may project provided:

- (1) The projection complies with the limitations in the preceding subsection; and
- (2) The projection does not extend beyond a point one-third (1/3) the distance to the property line; and
- (3) ~~but in no case shall~~ The projection be is not located closer than three (3) feet to the property line.

Section 18:

Article 22 (Exceptions and Modifications) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended with the addition of endnotes to read as follows:

[Notes Applicable to Article 22]

¹This term is defined in Article 1.